उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. M.P. No. 153/2007 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB : HON'BLE SHRI DHIRENDRA MISHRA, J.

APPLICANTS Bechhe Lal son of Bandi Lal, aged about 44 years, resident of R.T.S. Colony, Street No. 54, Quarter No. 1070, Police Station Torwa Town, Tehsil and District Bilaspur (C.G.)

Vs.

NON-APPLICANT The State of Chhattisgarh, through Station House Officer, Government Railway Police, Bilaspur (C.G.)

25-7-2007

Shri M.D. Dhote, Advocate for the applicant.

Shri G.K. Beriwal, Dy. A.G. for the State.

2. The applicant has preferred this application for quashing his criminal prosecution in Crime No. 735/2003 on the basis of which a criminal case No. 1646/2004 is pending before the Special Railway Magistrate, Bilaspur.

3. Learned counsel for the applicant submits that the applicant was Engine Driver of Train No. 338 which was going from Bilaspur to Raigarh. The train was stopped near Kulipara due to red signal. However when the train proceeded for destination, one Ashok Kumar while attempting to board the running train fell down under the train and his legs were amputated and he died. On the basis of the above accident, offence was registered and the charge sheet has been filed against the applicant and the Guard of the train under Section 304A of I.P.C. and under Section 175 of Indian Railways Act (for short

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hereinafter referred to as the Act). He further argued that a conjoint reading of Sections 175, 179 and 180F of Act results that cognizance of the offence under Section 175 of the Act cannot be taken by any court except on a complaint made by the officer authorized, however the Court below has taken cognizance for the offence under Section 175 of the Act on the basis of the charge sheet filed by the Government Railway Police in contravention of Section 180F of the Act.

4. I have heard learned counsel for the applicant. I have also perused the F.I.R. and the charge sheet filed against the applicant.

5. From perusal of the F.I.R. it transpires that the allegation against the applicant is that the train had halted near Kulipara Railway Crossing and all of a sudden, the applicant started the train without blowing horn as a result of which right leg of the deceased Ashok Kumar came under the train who ultimately died. The witnesses have also stated that the driver of the train started the train all of a sudden without blowing horn and at that time, one person came under the train. Thus from the evidence available in the charge sheet, there is a prima facie allegation against the applicant that he acted in a rash and negligent manner while starting the train without blowing horn and because of his rash and negligent act, it is alleged that the accident occurred.

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मामला क्रमांक.....**सन् 200**

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6. The Hon'ble Supreme Court in the matters of **Indian Oil Corporation –v- NEPC India Ltd. and others** reported in **(2006)6 SCC 736** while dealing with the principles relating to exercise of jurisdiction under Section 482 of Cr.P.C. to quash a complaint and criminal proceeding has held that :-

"(i) a complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the Court, as when the criminal proceeding is found to have been initiated with *mala fides*/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

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(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution."

7. In the instant case, if we examine prima facie allegations against the applicant as contained in the F.I.R. and the charge sheet, we find that there is specific allegation against the applicant that he being the driver of the train started the train all of a sudden without blowing horn as a result of which, the passengers who had alighted from the train scrambled to board the train resulting in the unfortunate accident which ultimately resulted in the death of Ashok Kumar. So far as technical objection that cognizance of the offence could not have been taken on the basis of police report in the absence of a complaint made by the officer authorized is concerned, it is open to the applicant to raise this objection before the trial Court which shall be decided by the trial Court on its own merit without being influenced by this order.

8. In the light of the aforesaid discussion, I find no merit in this petition. The petition being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

P/-

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